

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

CHARLES W. BECK and ANNETTE S. BECK,	*	
	*	
Plaintiffs,	*	
	*	
vs.	*	CASE NO. 3:16-cv-2(CDL)
	*	
BANK OF AMERICA HOME LOANS,	*	
	*	
Defendant.	*	

O R D E R

Plaintiffs Charles W. Beck and Annette S. Beck, who are proceeding *pro se*, "request that motion of entry to grant award . . . pursuant to Federal Rule of Civil Procedure 55(b)." Mot. for Entry of Order to Grant Award, ECF No. 16. The Court construes this motion as a motion for entry of default judgment under Federal Rule of Civil Procedure 55(b). Defendant is not in default, so Plaintiffs' motion (ECF No. 16) is denied.

The U.S. Marshal mailed a waiver of service to Defendant "Bank of America Home Loans" on February 18, 2016. USM 285 Process Receipt and Return, ECF No. 10. Defendant executed the waiver of service. Waiver of Service, ECF No. 12. Therefore, Defendant had until April 18, 2016 to answer or file a Rule 12(b) motion to dismiss. Fed. R. Civ. P. 12(a)(1)(A)(ii) ("A defendant must serve an answer . . . if it has timely waived service under Rule 4(d), within sixty days after the request for

a waiver was sent."); Fed. R. Civ. P. 12(b) (stating that a party may assert Rule 12(b) defenses in a motion rather than a responsive pleading and that a motion to dismiss asserting any Rule 12(b) defenses "must be made before pleading"). Defendant filed a motion to dismiss in lieu of an answer on April 18, 2016. Defendant is thus not in default. For all of these reasons, Plaintiffs' motion (ECF No. 16) is denied. If Plaintiffs wish to respond to Defendant's motion to dismiss, they should do so by May 12, 2016.

IT IS SO ORDERED, this 25th day of April, 2016.

s/Clay D. Land

CLAY D. LAND

CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA